

**C.M.P.Nos.7407 & 7408 of 2021****in****WEB COPY A.S.No. 168 of 2012 & C.R.P. No. 1674 of 2015****T.V. THAMILSELVI, J.**

These Civil Miscellaneous Petitions have been filed seeking to set aside the order dated 15.03.2021 dismissing the Appeal Suit and Civil Revision Petition for default respectively.

2. Mr.T.Murugamanickam, learned senior counsel for petitioner/appellant submitted that 1st appellant died on 21.02.2021 and after his demise, immediately, they have taken steps to implead his legal heirs, but this court proceeded the matter before the completion of 16th day virtual. So, legal heirs are not able to give proper instructions. However, the above appeal as well as civil revision petition were dismissed for default as steps were not taken. He would submit that the non-prosecution of appeal on that day is neither willful nor wanton and immediately, they have filed a petition to restore both the Appeal Suit and Civil Revision Petition. Furthermore, they have already taken steps to list the matter. Therefore, he prayed to set aside the orders passed by this court on 15.03.2021 and readmit the appeal as well as C.R.P.



3. Mr.Sai Krishnan, learned counsel for respondent appeared and submitted that purposely, they have allowed to dismiss both the appeal and C.R.P. Though the appeal was filed in the year of 2012, they have not taken steps to list the matter and get on with the disposal of appeal. However, this respondent/decreed holder filed an Execution Petition before the trial court to execute the decree, thereby he has taken all steps to execute the decree, but the same was prevented by the petitioner by dragging on the proceedings. Even after dismissal of appeal, nearly about 2 ½ years, they have not taken steps to restore the same and purposely they are dragging on the proceedings. After obtaining the order dated 16.06.2023 in Crl.O.P. proceedings before this court, the petitioners have taken steps to list the matter, which is a clear abuse of process of law. Therefore, he raised strong objections.

4. Immediately after obtaining the decree, the decree holder filed an Execution Petition before the Executing Court to execute the decree and similarly, the defendant also filed an appeal before this Court in A.S.No.168 of 2012. But, as rightly pointed out by the learned counsel for respondent that from the year of 2012, there was no progress in the appeal. Admittedly, the proceedings is also pending due to the conduct of petitioners. But, on considering the fact that the Appeal Suit and Civil Revision Petition are



pending from the year of 2012 and 2015 respectively, in the interest of justice, this court is inclined to allow these petitions on condition that the petitioners/appellants shall pay a sum of Rs.5000/- (Rupees five thousand only) towards cost to the respondent's counsel within a period of one week from the date of receipt of copy of this order.

5. Registry is directed to take immediate steps to call for records either from the trial court and place before this court by next hearing date

6. Post the matters on 05.09.2023 finally to try along with the appeal.

09.08.2023

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